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MS APPEAL BRIEF - PATENTS
PATENT
0879-0289P

IN THE U.S. PATENT AND TRADEMARK OFFICE

In re application of		Before the Board of Appeals	
ASHIDA, Tetsuro et al.		Appeal No.:	
Appl. No.:	09/707,948	Group:	2623
Filed:	November 8, 2000	Examiner:	V. BALI
Conf.:	9136		
For:	IMAGE PLAYBACK APPARATUS		

APPEAL BRIEF TRANSMITTAL FORM

MS APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

December 17, 2004

Sir:

Transmitted herewith is an Appeal Brief on behalf of the Appellants in connection with the above-identified application.

☐ The enclosed document is being transmitted via the Certificate of Mailing provisions of 37 C.F.R. § 1.8.

A Notice of Appeal was filed on October 19, 2004.

☐ Applicant claims small entity status in accordance with 37 C.F.R. § 1.27

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Respectfully submitted,

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Attachment(s)

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BRIEF ON BEHALF OF APPELLANTS

APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

December 17, 2004

Sir:

This Appeal Brief is respectfully submitted on behalf of the Appellants in connection with the above-identified application.

This is an Appeal from the Office Action of April 20, 2004 finally rejecting claims 1-18 in the above-identified application. The appealed claims are 1-18, and are set forth in the attached Appendix.

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I. REAL PARTY IN INTEREST

The instant application is assigned to Fuji Photo Film Co. Ltd., as recorded on January 8, 2001, at Reel/Frame 011416/0936. No further assignments of this application have been made.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences for the instant application.

III. STATUS OF THE CLAIMS

Claims 1-18 are finally rejected and are set forth in the attached Appendix.

IV. STATUS OF AMENDMENTS

There are no unentered amendments in this application.

V. SUMMARY OF THE INVENTION

Claim 1

The present invention relates to an image playback apparatus 10 that reproduces an image in visible form based on input image data. The image playback apparatus 10 executes a function for automatically changing a dynamic range of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image. FIGs. 2-4 of the present application also show the details of the above-described features. The corresponding written

description may be found at page 5, lines 18-26 through page 9, line 9; and page 15, lines 1-13 of the specification. FIG. 10 (and the corresponding description at pages 11-15 of the specification) shows a detailed example of an image playback apparatus 10 that includes an image recording function as well.

Claim 2

The present invention also relates to an image playback apparatus 10 that reproduces an image in visible form based on input image data. The image playback apparatus 10 executes a function for automatically changing a tone conversion characteristic of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image. FIGs. 2-5 of the present application also show the details of the above-described features. The corresponding written description may be found at page 5, lines 18-26 through page 9, line 9; and page 15, lines 1-13 of the specification. Tone conversion characteristics are specifically described at page 7, line 22 through page 9, line 9. FIG. 10 (and the corresponding description at pages 11-15 of the specification) shows a detailed example of an image playback apparatus 10 that includes an image recording function as well.

Claim 3

The present invention also relates to an image playback apparatus 10 that includes an image data input unit 22, 24 to which image data is input. An image output device 18, 28 which reproduces an image in visible form based on image data received from the image data input unit 22, and an area specifying device 20 which specifies a desired area from within an image

reproduced by the image output device 18 that has been selected by an action of a viewer viewing the reproduced image. A tone conversion characteristic varying device 22, 26, 30 which automatically changes a tone conversion characteristic of at least a part of the image containing the area specified by the area specifying device; and an image processing device 22, 26, 30 which creates the image to be reproduced by the image output device 18, 28 according to the tone conversion characteristic set by the tone conversion characteristic varying device 22, 26, 30. FIGs. 4 and 6 of the present application also show the functionality of the above-described structure with representative flow charts. The corresponding written description may be found at page 5, lines 18-26 through page 9, line 9; and page 15, lines 1-13 of the specification. Tone conversion characteristics are specifically described at page 7, line 22 through page 9, line 9. A line-of-sight detection apparatus 20 and a touch panel are also described in connection with FIGs. 4 and 6, respectively at page 7, line 22 through page 9, line 9. FIG. 10 (and the corresponding description at pages 11-15 of the specification) shows a detailed example of an image playback apparatus 10 that includes an image recording function as well.

Claim 7

The present invention also relates to a method of enhancing an image in visible form with an image playback apparatus 10. The method includes steps of reproducing an image in visible form based on input image data on an image output device 18, 28, and executing a function for automatically changing a dynamic range of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image on the image output device 18, 28. FIGs. 2-4, 6 and 7 of the present application also show the functionality of the above-described

structure and method steps. The corresponding written description may be found at page 5, lines 18-26 through page 9, line 9; and page 15, lines 1-13 of the specification.

Claim 13

The present invention also relates to a method of enhancing an image in visible form with an image playback apparatus 10. The method includes steps of reproducing an image in visible form based on input image data on an image output device 18, 28; and executing a function for automatically changing a tone conversion characteristic of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image on the image output device 18, 28. FIGs. 2-6 of the present application also show the functionality of the above-described structure and method steps. The corresponding written description may be found at page 5, lines 18-26 through page 9, line 9; and page 15, lines 1-13 of the specification. Tone conversion characteristics are specifically described at page 7, line 22 through page 9, line 9. A line-of-sight detection apparatus 20 and a touch panel are also described in connection with FIGs. 4 and 6, respectively at page 7, line 22 through page 9, line 9.

Claims 5, 9, 11, 12, 15, 17 and 18

The present invention also relates to a method and apparatus of enhancing an image in visible form with an image playback apparatus 10 that specifically includes a line-of-sight apparatus 20 that is used as the area specifying device. A line-of-sight detection apparatus 20 is specifically described in connection with FIGs. 2-4, at page 5 through page 9, line 9.

Claims 6, 8, 10, 14 and 16

The present invention also relates to a method and apparatus of enhancing an image in visible form with an image playback apparatus 10 that specifically includes a touch-panel (FIG. 6 and elements 14, 18) that is used as the area specifying device. A touch panel (FIG. 6 and elements 14, 18) is specifically described in connection with FIG. 6, page 7, line 22 through page 9, line 9.

VI. GROUNDS OF REJECTION

Claims 1-18 have been rejected under 35 USC 103 as being unpatentable over Schwartz, U.S. Patent 5,426,517, in view of Patton et al., U.S. Patent 6,102,846.

VII. APPELLANTS' ARGUMENTS

Claim 1

With respect to claim 1, the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention, including the feature(s) of: "executing a function for *automatically changing a dynamic range of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image.*" (emphasis added) Accordingly, this rejection is improper and should be reversed.

The Examiner has admitted that Schwartz does not teach or suggest automatically selecting at least a part of an image that has been selected by an action of a viewer (see page 3 of the Final Office Action mailed on April 20, 2004, paragraph 4). The Examiner has alleged that Patton et al. teach or suggest a modification of the Schwartz reference that would read on the claimed invention

of claims 1-3, 7 and 13. However, the alleged combination of the prior art of record would not have been obvious to one of ordinary skill in the art and/or the alleged combination of the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention. Accordingly, this rejection is improper and should be reversed.

In the claimed invention, the function of changing the dynamic range of all or part of the playback image responsive to the an action of the viewer occurs automatically. For example, the present application discusses that this may be accomplished with a line-of-sight apparatus or a touch panel device for designating all or part of an image that may be automatically adjusted or enhanced. Therefore, after the viewer has selected a region that may require enhancement by an action of the viewer, e.g., either through a touch panel or with the use of a line-of-sight detection apparatus, the CPU changes the dynamic range of the portion of the image specified by the viewer and automatically reproduces a white-skip or blackening part, as necessary (see step S630, FIG. 6 of the present application to aid in the understanding of the present application with respect to a touch panel, FIG. 4 for a line-of-sight apparatus).

In the Schwartz patent, an image processing system that enhances an image on a display in response to an input request from an operator is described. In Schwartz, the image enhancement is accomplished by transforming the image to compensate for tone compression, e.g., the image is remapped automatically with a default tonal transform. However, as described by Schwartz, this process is a semi-automatic input process for inputting control points. The operator selects a region of an image that requires enhancement (either too light or too dark) with a cursor. Further, the "operator then has the option of specifying a desired value for that point which is different from the measured value. The software will then fit a cubic spline through the point which the operator has

defined." (col. 13, lines 36-40 cited by Examiner) However, the tone is not varied unless the operator designates a new value different from the measured value. Therefore, this tonal adjustment or enhancement cannot reasonably be considered to be an automatic adjustment as it requires additional input from the user, i.e., the new value.

Although the Examiner is persuaded that Schwartz does not teach or suggest automatically changing a dynamic range or tone conversion of a portion of an image selected by a user (an action of the user), the Examiner alleges that Patton et al. teaches or suggests this feature. The Examiner has apparently misinterpreted the teachings of the Patton et al. reference. Further, Appellants submit that if the Patton et al. reference is considered in its entirety, it is clear that one of ordinary skill in the art would not have modified the Schwartz system as alleged by the Examiner.

Specifically, Patton et al. is related to a system for diagnosing and treating stress in patients based on individual user profiles that have been created from data collected relating to the physiological state of the patient. Patton et al. describes changing a sequence of images or the types of images that are seen by a patient to induce or overcome conditioned responses from the patient. However, neither Schwartz nor Patton et al. appear to teach or suggest automatically changing a tone conversion or a dynamic range of a part of an image based on a response from a user. In the claimed invention, a portion of an image is augmented or altered based on the response of the user. In contrast, Patton et al. replaces an entire image with another image. Therefore, there is no discussion of automatic adjustment of the dynamic range of all or part of a user defined image (image area).

The Examiner will note that since Patton et al. is directed at a system for diagnosing and treating stress, entire images are replaced by alternative images upon detecting changes in stress

levels. Therefore, Appellants submit that Patton et al. in no way suggests selecting a part of an image or any portion thereof for either automatic tone conversion or dynamic range responsive to an action of a user. In fact, Patton et al. is not related to image enhancement, but instead replaces entire images with alternative images upon detecting levels of stress induced in a patient by changing physiological conditions, i.e., with a different type of image or with the next image in a group or series of images. Accordingly, the Examiner's opinion that it would have been obvious to alter the Schwartz reference with the alleged teachings of Patton et al. is actually incorrect, as Patton et al. is not related to image enhancement or reproduction as alleged by the Examiner. Instead, Patton et al. is directed at diagnosing stress and replacing entire images with alternative images responsive to actions or physiological conditions of a user. Since Patton et al. does not teach or suggest any features relating to automatic adjustment of tone conversion characteristic and/or a dynamic range of a user designated image area, this reference clearly does not or suggest any motivation to alter the Schwartz reference as alleged by the Examiner. Therefore, Patton et al. does not provide any motivation or teaching that would suggest modifying the Schwartz system to include automatic adjustment of a dynamic range or a tone conversion characteristic.

Therefore, one of ordinary skill in the art would not look to the alleged teachings of Patton et al. to modify the Schwartz reference as suggested by the Examiner. Specifically, Patton et al. is not related to image enhancement, but instead merely to detecting patient stress levels responsive to visual images. Even if Patton et al. were utilized to modify the Schwartz reference as suggested by the Examiner, neither of these references provides any teaching or suggestion of automatic adjustment of a dynamic range of all or part of a user designated image. Therefore, this rejection is improper as the resulting combination of the prior art of record would not have been obvious and/or

the resulting combination does not teach or suggest each and every limitation of the claimed invention. Accordingly, this rejection is improper and should be reversed.

Claim 2

With respect to claim 2, Appellants submit that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention, including the feature(s) of: "executing a function for *automatically* changing a tone conversion characteristic of at least a part of the reproduced image *that has been selected by an action of a viewer viewing the reproduced image.*" (emphasis added) Accordingly, this rejection is improper and should be reversed.

As discussed in greater detail with respect to claim 1, the proposed combination of the prior art of record does not establish a proper prima facie case of obviousness. Specifically, one of ordinary skill in the art would not look to the alleged teachings of Patton et al. to modify the Schwartz reference as suggested by the Examiner. For example, Patton et al. is not related to image enhancement, but instead merely to detecting patient stress levels responsive to visual images. Even if Patton et al. were utilized to modify the Schwartz reference as suggested by the Examiner, neither of these references provides any teaching or suggestion of automatic adjustment of a tone conversion characteristic of a part of a user designated image area. Therefore, this rejection is improper as the resulting combination of the prior art of record would not have been obvious and/or the resulting combination does not teach or suggest each and every limitation of the claimed invention. Accordingly, this rejection is improper and should be reversed.

Claim 3

With respect to claim 3, Appellants submit that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention, including the feature(s) of: "an *area specifying device which specifies a desired area from within an image reproduced by the image output device that has been selected by an action of a viewer viewing the reproduced image*; a tone conversion characteristic varying device which *automatically changes a tone conversion characteristic of at least a part of the image containing the area specified by the area specifying device.*" (emphasis added) Accordingly, this rejection is improper and should be reversed.

As discussed in greater detail with respect to claim 1, the proposed combination of the prior art of record does not establish a proper prima facie case of obviousness. Specifically, one of ordinary skill in the art would not look to the alleged teachings of Patton et al. to modify the Schwartz reference as suggested by the Examiner. For example, Patton et al. is not related to image enhancement, but instead merely to detecting patient stress levels responsive to visual images. Even if Patton et al. were utilized to modify the Schwartz reference as suggested by the Examiner, neither of these references provides any teaching or suggestion of automatic adjustment of a tone conversion characteristic of a part of a user designated image area. Therefore, this rejection is improper as the resulting combination of the prior art of record would not have been obvious and/or the resulting combination does not teach or suggest each and every limitation of the claimed invention. Accordingly, this rejection is improper and should be reversed.

Claim 7

With respect to claim 7, Appellants submit that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention, including the feature(s) of: "executing a function *for automatically changing a dynamic range of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image on the image output device."* (emphasis added) Accordingly, this rejection is improper and should be reversed.

As discussed in greater detail with respect to claim 1, the proposed combination of the prior art of record does not establish a proper prima facie case of obviousness. Specifically, one of ordinary skill in the art would not look to the alleged teachings of Patton et al. to modify the Schwartz reference as suggested by the Examiner. For example, Patton et al. is not related to image enhancement, but instead merely to detecting patient stress levels responsive to visual images. Even if Patton et al. were utilized to modify the Schwartz reference as suggested by the Examiner, neither of these references provides any teaching or suggestion of automatic adjustment of a dynamic range a part of a user designated image area. Therefore, this rejection is improper as the resulting combination of the prior art of record would not have been obvious and/or the resulting combination does not teach or suggest each and every limitation of the claimed invention. Accordingly, this rejection is improper and should be reversed.

Claim 13

With respect to claim 13, Appellants submit that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention,

including the feature(s) of: "executing a function for *automatically changing a tone conversion characteristic of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image on the image output device.*" (emphasis added) Accordingly, this rejection is improper and should be reversed.

As discussed in greater detail with respect to claim 1, the proposed combination of the prior art of record does not establish a proper prima facie case of obviousness. Specifically, one of ordinary skill in the art would not look to the alleged teachings of Patton et al. to modify the Schwartz reference as suggested by the Examiner. For example, Patton et al. is not related to image enhancement, but instead merely to detecting patient stress levels responsive to visual images. Even if Patton et al. were utilized to modify the Schwartz reference as suggested by the Examiner, neither of these references provides any teaching or suggestion of automatic adjustment of a tone conversion characteristic of a part of a user designated image area. Therefore, this rejection is improper as the resulting combination of the prior art of record would not have been obvious and/or the resulting combination does not teach or suggest each and every limitation of the claimed invention. Accordingly, this rejection is improper and should be reversed.

Claims 5, 9, 11, 12, 15, 17 and 18

With respect to claims 5, 9, 11, 12, 15, 17 and 18, the rejection advanced by the Examiner fails to establish a proper facie case of obviousness as discussed in greater detail hereinabove with respect to the corresponding independent claims. In addition, claims 5, 9, 11, 12, 15, 17 and 18 provide the additional limitation of a line-of-sight detection apparatus (element 20 in the specification) that permits the user to designate a user defined image area by simply looking at an

image on a display. Exemplary operation of this apparatus is provided in the present application with respect to FIGs. 2-4 of the present application.

In Schwartz, any selection of user-defined image area has been accomplished with a cursor, e.g., controlled by a mouse 40. In Patton et al., a detector device (11) is provided for detecting patient stress levels. However, the Examiner has not identified a line-of-sight detection apparatus anywhere in the prior art of record or a motivation to provide a line-of sight detection apparatus in a system such as that described by Schwartz. Accordingly, this rejection is improper and should be reversed.

Claims 6, 8, 10, 14 and 16

With respect to claims 5, 9, 11, 12, 15, 17 and 18, the rejection advanced by the Examiner fails to establish a proper facie case of obviousness as discussed in greater detail hereinabove with respect to the corresponding independent claims. In addition, claims 5, 9, 11, 12, 15, 17 and 18 provide the additional limitation of a touch panel (based on manual input by the user and described in connection with FIG. 6) that permits the user to designate a user defined image area by manually selection with a touch panel device (manual input on the display 14, 18). Exemplary operation of this apparatus is provided in the present application with respect to FIGs. 2-3 and 6 of the present application.

In Schwartz, any selection of user-defined image area has been accomplished with a cursor, e.g., controlled by a mouse 40. In Patton et al., a detector device (11) is provided for detecting patient stress levels. However, the Examiner has not identified a touch panel anywhere in the prior

art of record or a motivation to provide a touch panel in a system such as that described by Schwartz. Accordingly, this rejection is improper and should be reversed.

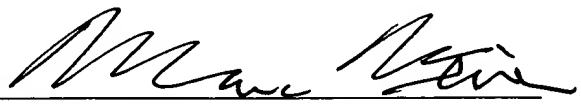
Conclusion

Appellants submit that the rejection based upon the Schwartz and Patton et al. references is improper. The prior art of record fails to provide any motivation to modify the Schwartz reference as alleged by the Examiner. Further, the resulting combination of the prior art of record still does not teach or suggest each and every limitation of the unique combination of limitations of the claimed invention. Since the Examiner has failed to establish a proper prima facie case of obviousness, this rejection should be reversed.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
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Attachments: Claims Appendix
Evidence Appendix
Related Proceedings Appendix

VIII. CLAIMS APPENDIX

1. (PREVIOUSLY PRESENTED) An image playback apparatus that reproduces an image in visible form based on input image data, said image playback apparatus executing a function for automatically changing a dynamic range of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image.

2. (PREVIOUSLY PRESENTED) An image playback apparatus that reproduces an image in visible form based on input image data, said image playback apparatus executing a function for automatically changing a tone conversion characteristic of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image.

3. (PREVIOUSLY PRESENTED) An image playback apparatus, comprising:

an image data input unit to which image data is input;

an image output device which reproduces an image in visible form based on image data received from the image data input unit;

an area specifying device which specifies a desired area from within an image reproduced by the image output device that has been selected by an action of a viewer viewing the reproduced image;

a tone conversion characteristic varying device which automatically changes a tone conversion characteristic of at least a part of the image containing the area specified by the area specifying device; and

an image processing device which creates the image to be reproduced by the image output device according to the tone conversion characteristic set by the tone conversion characteristic varying device.

4. (ORIGINAL) The image playback apparatus according to claim 3, wherein the image output device comprises at least one of a display device and a printer.

5. (ORIGINAL) The image playback apparatus according to claim 3, wherein:

the image output device comprises a display device; and

the area specifying device comprises a line-of-sight detection apparatus which detects a line-of-sight direction of the viewer looking at a screen of the display device.

6. (ORIGINAL) The image playback apparatus according to claim 3, wherein:

the image output device comprises a display device; and

the area specifying device comprises a touch panel provided on the display device.

7. (PREVIOUSLY PRESENTED) A method of enhancing an image in visible form with an image playback apparatus, said method comprising:

reproducing an image in visible form based on input image data on an image output device; and

executing a function for automatically changing a dynamic range of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image on the image output device.

8. (PREVIOUSLY PRESENTED) The method according to claim 7, wherein the action of the viewer viewing the reproduced image is a manual input to a touch panel device.

9. (PREVIOUSLY PRESENTED) The method according to claim 7, wherein the action of the viewer viewing the reproduced image is a movement of the viewer's eyes detected by a line-of-sight detection apparatus.

10. (PREVIOUSLY PRESENTED) The method according to claim 8, wherein an area specifying device specifies a desired area from within the image reproduced by the image output device that has been selected by the action of the viewer viewing the reproduced image on the image output device.

11. (PREVIOUSLY PRESENTED) The method according to claim 9, wherein an area specifying device specifies a desired area from within the image reproduced by the image output device that has been selected by the action of the viewer viewing the reproduced image on the image output device.

12. (PREVIOUSLY PRESENTED) The method according to claim 11, wherein the line-of-sight detection apparatus detects a line-of-sight direction of the viewer looking at a screen of the output image device.

13. (PREVIOUSLY PRESENTED) A method of enhancing an image in visible form with an image playback apparatus, said method comprising:

reproducing an image in visible form based on input image data on an image output device; and

executing a function for automatically changing a tone conversion characteristic of at least a part of the reproduced image that has been selected by an action of a viewer viewing the reproduced image on the image output device.

14. (PREVIOUSLY PRESENTED) The method according to claim 13, wherein the action of the viewer viewing the reproduced image is a manual input to a touch panel device.

15. (PREVIOUSLY PRESENTED) The method according to claim 13, wherein the action of the viewer viewing the reproduced image is a movement of the viewer's eyes detected by a line-of-sight detection apparatus.

16. (PREVIOUSLY PRESENTED) The method according to claim 14, wherein an area specifying device specifies a desired area from within the image reproduced by the image output device that has been selected by the action of the viewer viewing the reproduced image on the image output device.

17. (PREVIOUSLY PRESENTED) The method according to claim 15, wherein an area specifying device specifies a desired area from within the image reproduced by the image output device that has been selected by the action of the viewer viewing the reproduced image on the image output device.

18. (PREVIOUSLY PRESENTED) The method according to claim 17, wherein the line-of-sight detection apparatus detects a line-of-sight direction of the viewer looking at a screen of the output image device.

IX. EVIDENCE APPENDIX

None

X. RELATED PROCEEDINGS APPENDIX

None